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Quintero v. Klaveness Ship Lines United States Court of Appeals, Fifth Circuit, 16 October 1990 914 F.2d 717

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ESTEE LAUDER INT'L., INC. v. WORLD WIDE MARINE SERV. INC.
United States Court of Appeals, Second Circuit, 14 January 1991
923 F.2d 238

An insurance company which authorizes its insured to issue "special marine policies" is liable to those third parties for whom the policies are issued regardless of the third parties' knowledge of such policy.

FACTS: In February 1987 appellant, Estee Lauder International, Inc. (Estee Lauder) employed World Wide Marine Service Inc. (World Wide), a trucking company, to transport cosmetics from Melville, Long Island to Puerto Rico. The truck carrying the goods was stolen in New Jersey while on its way to Port Elizabeth, and only a small portion of the \$180,000 worth of cosmetics was ever recovered. Estee Lauder received \$147,000 for the stolen cosmetics from their insurer, Commercial Union Insurance Companies (Commercial Union). World Wide was insured under an open cargo policy issued by Travelers Indemnity Company (Travelers). Under this open cargo policy, World Wide was authorized to issue "special marine policies" on Travelers' forms. These policies provided warehouse to warehouse "all risks" insurance coverage to shippers who employed World Wide to move their cargo. Although the open cargo policy had specific restrictions pertaining to the issuance of special marine policies, these restrictions were not printed on the special marine policies. Exercising their authorization under the open cargo policy, World Wide issued a special marine policy for \$52,000 to cover the Estee Lauder cosmetics. The premiums for this policy were paid by World Wide. After the theft, World Wide immediately contacted Travelers and submitted claim documentation. Travelers accepted the claim documentation but then denied coverage on the grounds that Estee Lauder had other insurance and that World Wide had violated the open cargo policy by issuing the policy to obtain legal liability coverage for itself.

Estee Lauder and its subrogated insurer, Commercial Union (hereinafter referred to collectively as Estee Lauder) brought an action against World Wide and Travelers for the \$147,000 loss. Prior to the trial Estee Lauder filed three motions for summary judgment. The first motion, made against World Wide, resulted in a judgment against World Wide for the cargo loss. The other two motions were against Travelers to enforce

the special marine policy. These motions were denied because neither party could locate a countersigned original of the document, and the policy would not be binding without the countersignature. The district court held for Travelers stating that the special marine policy was issued but that it was unauthorized since World Wide had paid the policy premiums and Estee Lauder had never submitted a written request for the policy and therefore it was not binding on Travelers.

ISSUE: Is an insurance company, which authorizes its insured to issue "special marine policies", liable to third parties for whom the policies are issued regardless of the third parties knowledge of such policy?

ANALYSIS: The Court of Appeals for the Second Circuit held that Travelers, which had authorized World Wide to issue special marine policies was liable to Estee Lauder, the third-party beneficiary to the policy. In reaching this decision the court relied on the district court finding that the special marine policy had been issued. Since the policy is a contract, the court found Estee Lauder to be a third-party beneficiary of the policy and therefore able to bring action to enforce the policy terms. The court went on to disagree with the remainder of the district court holding, stating it was not relevant which party paid the policy premiums in determining Travelers liability. The court also discarded the finding that the special marine policy was unauthorized since Estee Lauder did not make a written request for the policy as required in the open cargo policy. The court deemed the requirement merely a policy condition and that Travelers had waived this condition by accepting the policy premiums. Based on these findings the district court was reversed and Travelers was held to be bound to the special marine policy that World Wide issued for Estee Lauder.

Kathleen O'Gara '92

QUINTERO v. KLAVENESS SHIP LINES
United States Court of Appeals, Fifth Circuit, 16 October 1990
914 F.2d 717

A district court may enjoin further relitigation of a choice-of-law determination made pursuant to its *forum non conveniens* dismissal of a seaman's personal injury.

FACTS: A Filipino sailor, Rosauro Quintero (Quintero), was injured while unloading a Liberian-registered, Norwegian-owned ship, the M/V Barwa, docked in the port of New Orleans. In September 1986, Quintero filed suit against Torvals Klaveness & Co. A/S (Klaveness), who managed the vessel, in the Eastern District of Louisiana seeking damages for his injury. In July 1987, Quintero filed a parallel suit for the same injuries in Louisiana state court, later including in his petition the four Norwegian interests (A/S Otrå; Harald Moller Investment A/S; Galva Limited A/S; and Gorrissen and Klaveness A/S henceforth referred to as the "Barwa interests") who owned the vessel. In April 1988, a federal court issued a final judgment dismissing Quintero's suit under the doctrine of *forum non conveniens*. The Court of Appeals for the Fifth Circuit vacated the district court judgment and remanded the case instructing the district court to reconsider its decision under the doctrine established in *In re Air Crash Disaster Near New Orleans, La. on July 9, 1982*, 821 F.2d 1147 (5th Cir. 1987), *certiorari granted and judgment vacated*, *Pan American World Airways, Inc. v. Lopez*, 490 U.S. 1032 (1989), *on remand to*, *In re Air Crash Disaster Near New Orleans, La. on July 9, 1982*, 883 F.2d 17 (5th Cir. 1989).

After remand Quintero was denied a motion dismissing his federal suit. The district court granted Klaveness's motion to dismiss for *forum non conveniens* with prejudice after determining that Philippine law should govern the controversy, and further granted Klaveness's request for an injunction preventing Quintero from relitigating the choice-of-law issues in state court. Quintero appealed to the Fifth Circuit claiming that the district court had abused its discretion by enjoining him from relitigating in state court, in dismissing the claim with prejudice on *forum non conveniens*, in not granting his motion for voluntary dismissal, and additionally, for refusing to compel Klaveness to answer interrogatories dealing with the choice-of-law issue. Quintero also claimed the district court had erred in deciding that Philippine law should govern and in making the choice-of-law determination prior to dismissal for *forum non conveniens*.

ISSUES: (1) Whether a district court in a maritime case may enjoin further relitigation in state court of a choice-of-law issue?

(2) Whether the district court committed error in granting a motion to dismiss for *forum non conveniens*, with

(continued ...)

Quintero v. Klaveness (continues)

prejudice after making a choice-of-law determination that Philippine law should govern the controversy?

(3) Whether the district court committed error in granting *forum non conveniens*, with prejudice after denying the plaintiff's motion for voluntary dismissal?

(4) Was the district court, on further discovery, after the case had been remanded, required to compel the defendant to come forward with documents after the plaintiff had been notified that the documents did not exist during prior discovery?

ANALYSIS The Court of Appeals found that the district court had not abused its discretion by enjoining Quintero from relitigating the choice-of-law issue in state court. It held that, as a matter of law, the injunction was within the relitigation exception of the Anti-Injunction Act, 28 U.S.C. §2283, as applied in *Chick Ram Choo v. Exxon Corp.*, 486 U.S. 140 (1988). The relitigation exception originated from a policy aimed at preventing costly and judicially wasteful redeterminations in state court. There was sufficient evidence found that the cost of relitigating either the choice-of-law or *res judicata* issues would cause irreparable injury. The injunction here was held not to be overbroad in protecting the Barwa interests as the Barwa interests were in privity with Klaveness. A district court may include privies of parties within the scope of its injunction.

The Court of Appeals further found that a choice-of-law determination in a maritime case is a determination on the merits and therefore may be treated as a motion for summary judgment. *Nunez-Lozano v. Rederi*, 634 F.2d 135 (5th Cir. 1980), Unit A (cited only for the proposition stated). The district court, having determined that Philippine law governed the controversy, had reached the merits, therefore its dismissal on grounds of *forum non conveniens*, which included the choice-of-law determination, was necessarily given with prejudice.

In determining whether dismissal for *forum non conveniens* was permissible, the Court of Appeals held that such determination was permissible as long as the plaintiff was given adequate protection to reinstate the action. The district court had imposed five prerequisites to entry of *forum non conveniens* so that Quintero could reinstate and litigate his claim in the Philippines without undue inconvenience or prejudice. These five prerequisites required Klaveness to: (1) submit to service of process and jurisdiction in the appropriate forum in the Philippines; (2) waive any statute of limitations defense that has matured since the commencement of the action in American courts; (3) make available all relevant documents under their control and all relevant witnesses who were their employees at the time of the accident and who remained their employees when the trial began in the Philippine forum; (4) agree that any depositions, answers to interrogatories, responses to requests for production of documents, and admissions filed at the district court proceedings could be used in the Philippine proceeding to the same extent as if they had originated there; and (5) formally agree in the Philippine proceeding to satisfy any final judgment rendered by such court. The Court of Appeals held that these prerequisites adequately protected the plaintiff's ability to reinstate his action and a determination of *forum non conveniens* with prejudice, giving the decision preclusive effect, was permissible. This effectively enjoined any relitigation of the district court's choice-of-law decision that the plaintiff may begin in a more sympathetic forum.

In deciding that the district court had wrongly concluded that Philippine law applied, the Court of Appeals had to perform *de novo* review of the seven *Lauritzen-Rhoditis* factors. *Lauritzen v. Larsen*, 345 U.S. 571 (1953); *Hellenic Lines v. Rhoditis*, 398 U.S. 306 (1970). Only the first factor of the test, the place of the wrongful act, favored the plaintiff. The injury had occurred aboard the vessel docked in the Port of New Orleans. Despite a national interest in the safe handling of cargo in United States

ports, the Court held this factor to have little importance. The choice-of-law significance of 'the place of the wrong act' factor is determined by whether the tort occurred on board the ship, not whether the local sovereign had an interest in preventing the wrongful act. The other *Lauritzen-Rhoditis* factors either failed to favor application of United States law or favored Philippine law. Recognizing the limited significance of the place of the injury, the court determined that Philippine law controlled the controversy.

To reverse a district court's dismissal for *forum non conveniens*, the Court of Appeals had to find a showing of clear abuse of discretion. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981); *In re Air Crash*, 821 F.2d, 1165-66 (5th Cir. 1987). The Court of Appeals found that the district court properly followed the process outlined in *In re Air Crash* in deciding whether *forum non conveniens* was appropriate. First, the *In re Air Crash* test required a finding that the alternative forum was both adequate and available. Following this, the district court had to weigh the various private interests in litigating in the forums, with deference given to the plaintiff's choice of forum. The district court then must weigh the public interest factors. Weighing of the public interest factors required a choice-of-law determination. Having found no error in the district court's determination utilizing the *In re Air Crash* test, the making of a choice-of-law determination while deciding on *forum non conveniens* was neither erroneous nor an abuse of discretion.

The Court of Appeals made a number of findings in determining whether there had been abuse of discretion in denying the plaintiff's motion for voluntary dismissal. Firstly, if either party wished to avoid having the merits of the case addressed in federal court, a motion for dismissal for *forum non conveniens* did not preclude addressing the merits. As a *forum non conveniens* dismissal included a choice-of-law decision a motion for dismissal for *forum non conveniens* carried with it the potential of addressing the merits. Additionally, the application of a federal injunction which enjoined further litigation of a choice-of-law issue did not violate considerations of federalism, nor did federalism require the district court to grant a voluntary dismissal under the facts of this case. Finally, the court held that, although a district court could not deny voluntary dismissal unless the plaintiff showed plain legal prejudice, *Pullman's Palace Car Co. v. Central Trnsp. Co.*, 171 U.S. 138, 146 (1897), plain legal prejudice was established here. The expense of relitigation, the exposure to additional actions and the loss of the federal *forum non conveniens* defense which would result from a voluntary dismissal, created plain legal prejudice. Therefore, there existed no abuse of discretion in denying the motion for voluntary dismissal.

The Court of Appeals also affirmed the district court's decision not to compel the defendant to come forward to answer the plaintiff's two interrogatories requesting records detailing volume of trade done by Klaveness in the United States and other nations. At a deposition during earlier discovery a representative of Quintero had estimated the volume of trade Klaveness kept with the United States to be 10-20%. This was mere estimation. Klaveness kept no records from which accurate statistics could be derived. During additional discovery allowed by the district court on remand, Quintero had served the two interrogatories asking with which nations did Klaveness conduct more business than the United States, and by what documents were such determinations made. Klaveness objected stating that it could not provide this information as it, as previously explained, had no such records. The district court granted Klaveness's objection. The Court of Appeals found no abuse of discretion noting that the district court had wide discretion in determining the scope and effect of discovery.

Having made the above findings, the Court of Appeals concluded the rulings of the district court proper in all respects and affirmed the judgment.